

WC 02-121

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May 27, 2003

FCC/MELLO

MAY 27 2003

BY COURIER

Federal Communications Commission
Wireline Competition Bureau - CPD - 214 Appls.
P.O. Box 358145
Pittsburgh, PA 15251-5145

Re: METROMEDIA FIBER NETWORK SERVICES, INC. DEBTOR-IN-POSSESSION
Application For Consent To Transfer Control Of A Company Holding A Blanket
Domestic Section 214 Authorization Pursuant To Section 214 Of The
Communications Act

Metromedia Fiber Network Services, Inc., Debtor-in-Possession, by its attorneys, respectfully submits an original and five copies of the above-captioned application. Remittance Form 159 and a check to cover the \$860 filing fee are appended. An additional copy of this filing has been provided as well for date-stamp and return to the delivering courier. If there are any questions regarding this application, please contact Joan M. Griffin at (703) 918-2320. Thank you in advance for your assistance with this matter.

Sincerely,



Winifred Brantl

enclosures

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page No 1 of 1

(1) LOCKBOX # 358145

SPECIAL USE

FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)

Kelley Dye & Warren LLP

(3) TOTAL AMOUNT PAID (U.S. Dollars and cents)

\$860.00

(4) STREET ADDRESS LINE NO. 1

8000 Towers Crescent Drive

(5) STREET ADDRESS LINE NO. 2

Suite 1200

(6) CITY

Vienna

(7) STATE

VA

(8) ZIP CODE

22182

(9) DAYTIME TELEPHONE NUMBER (include area code)

703-918-2320

(10) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(11) PAYER (FRN)

0006554778

(12) PAYER (TIN)

0135335107

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

(13) APPLICANT NAME

Metromedia Fiber Network Services, Inc., Debtor-In-Possession

(14) STREET ADDRESS LINE NO. 1

360 Hamilton Avenue

(15) STREET ADDRESS LINE NO. 2

(16) CITY

White Plains

(17) STATE

NY

(18) ZIP CODE

10601

(19) DAYTIME TELEPHONE NUMBER (include area code)

914-421-6700

(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(21) APPLICANT (FRN)

0009017393

(22) APPLICANT (TIN)

13-3982836

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID

(24A) PAYMENT TYPE CODE

(25A) QUANTITY

CUT

1

(26A) FEE DUE FOR (PTC)

\$860.00

(27A) TOTAL FEE

\$860.00

FCC USE ONLY

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FCC USE ONLY

(28B) FCC CODE 1

(29B) FCC CODE 2

SECTION D - CERTIFICATION

(30) CERTIFICATION STATEMENT

I, WINAFED ROMANIL,
the best of my knowledge, information and belief.

certify under penalty of perjury that the foregoing and supporting information is true and correct to
SIGNATURE Winafed Romanil DATE 5-27-03

SECTION E - CREDIT CARD PAYMENT INFORMATION

(31)

☐

MASTERCARD

MASTERCARD/VISA ACCOUNT NUMBER:

EXPIRATION
DATE:

☐

VISA

I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described.

SIGNATURE _____ DATE _____

KELLEY DRYE & WARREN LLP
8000 TOWERS CRESCENT DR STE 1200
VIENNA, VA 22182

1115

68-760/560
BRANCH 06577

DATE May 27, 2003

PAY
TO THE
ORDER OF

Federal Communications Commission

\$ 860.00

Eight hundred sixty and no/100-----

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Included.
Overfill on back.

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Donnie Wood

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DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW. IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.
KELLEY DRYE & WARREN LLP

DATE	DESCRIPTION	AMOUNT
5/27/03	Filing fee for Section 214 transfer of appli- cation on behalf of MFN/Federal-State 010540.0005 Exp. Code 000208 E100.E112 J. Griffin (04084) <i>MFNS- DOM DOC</i>	\$860.00

On May 20, 2002, MFNS, as well as its parent company Metromedia Fiber Network, Inc. ("MFN") and most of MFN's domestic subsidiaries (collectively, the "MFN Companies"), filed voluntary petitions for reorganization pursuant to Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York.⁴ The MFN Companies have continued in the management and operation of their businesses and properties as Debtors-in-Possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code; no trustee or examiner has been appointed. On May 29, 2002, the Office of the United States Trustee (the "United States Trustee") appointed an eleven member official committee of unsecured creditors, which has engaged Chadbourne & Parke, LLP as its counsel ("Creditors' Committee"). MFN proposed its initial Plan for the resolution of outstanding creditor claims and equity interests to the Bankruptcy Court on March 13, 2003, and filed its amended Plan and Disclosure Statement on May 9, 2003.⁵

MFN anticipates that the Bankruptcy Court will hold a hearing to consider confirmation of the Plan in July, 2003.

Assuming the Plan is confirmed by the Bankruptcy Court, the outstanding shares of common stock of MFN would be cancelled. Certain secured lender claims and a substantial

⁴ See *In re Metromedia Fiber Network, Inc., et al.*, Case No. 02-22736 (ASH) through 02-22742 (ASH); 02-22744 (ASH) through 02-22746 (ASH); 02-22751 (ASH) through 02-22754 (ASH) (Bankr.S.D.N.Y.), filed May 20, 2002 ("Bankruptcy Case"). Pursuant to Section 63.24(f) of the Commission's Rules, MFNS notified the Commission of the *pro forma* assignment of the subject authorization from Metromedia Fiber Network Services, Inc. to Metromedia Fiber Network Services, Inc, Debtor-in-Possession, by letter dated June 6, 2002 in File No. ITC-214-19990218-00110.

⁵ See "Disclosure Statement And Summary of Plan Distributions For Holders Of Claims and Equity Interests With Respect To The Plan Of Reorganization Of Metromedia Fiber Network, Inc.," filed May 9, 2003 in the Bankruptcy Case. A copy of the Disclosure Statement is provided in Annex A. The Plan is described and included in the Disclosure Statement as Exhibit A.

portion of allowed general unsecured claims would be converted into equity in the newly reorganized MFN ("Reorganized MFN") in the form of new common stock. Reorganized MFN would seek to obtain additional funding through a \$50 million rights offering available to certain shareholders. The Plan also provides for the grant of stock options and restricted stock to Reorganized MFN management and two series of warrants to certain creditors for the purchase of additional common stock. Consummation of the Plan is subject to a number of conditions, including the preparation of definitive documentation and the receipt of Bankruptcy Court and regulatory approvals.

Prior to MFN's bankruptcy, a majority of the members of the Board of Directors of MFN were elected by Metromedia Company ("Metromedia"). The John W. Kluge Virginia Trust ("VA Trust") is a general partner of Metromedia. The VA Trust refers to a trust established pursuant to a certain trust agreement, dated May 30, 1984, as amended and restated, between John W. Kluge as grantor and John W. Kluge, David Finkelstein and Stuart Subotnick as trustees. As debtors-in-possession, the MFN Companies operate under the supervision of the Bankruptcy Court, the United States Trustee, and the Creditors' Committee, and thus the Board's control of MFN (and MFNS) is somewhat limited.

On the basis of current amount of relevant secured lender and allowed general unsecured claims and other current information, MFNS anticipates that following the rights offering, no entity will control MFN. Only two shareholders -- the Kluge Trust and Mutual Shares Fund ("Mutual") -- will hold 10 percent or more of the common stock of Reorganized MFN. The "Kluge Trust" refers to a trust established pursuant to a certain trust agreement, dated May 30, 1984, as amended and restated, between John W. Kluge, as grantor and John W. Kluge, Chase Manhattan Bank and Stuart Subotnick, as trustees, and any successors, assigns and transferees

thereof. Mutual is a mutual fund operating under the aegis of Franklin Templeton Investments ("Franklin"). The Kluge Trust, John W. Kluge, and Mutual are U.S. citizens or incorporated or registered in the U.S., as appropriate.

As discussed below, the public interest is served if MFN is restructured in accordance with the Plan. The reorganization of MFN according to the Plan will place Reorganized MFNS on firm financial footing and will thereby preserve and strengthen competition in the telecommunications industry, to the ultimate benefit of the public. MFNS will continue to provide high-quality communications services to its customers without interruption. At the same time, the procompetitive benefits of the Plan will not be diminished by any anticompetitive effects. The proposed transaction is a reorganization in bankruptcy, not a merger. No competitors will be eliminated as a result of the transaction.

The proposed transaction, therefore, serves the public interest, and is fully consistent with the Act and the Commission's Rules. Because the continued operation and success of MFNS as a reorganized company is dependent on MFN's and MFNS' emergence from bankruptcy as contemplated by the Plan, MFNS requests that the Commission grant this Application as expeditiously as possible.

II. DESCRIPTION OF MFNS

A. Current Ownership of MFNS

MFNS is incorporated in Delaware and maintains its headquarters in White Plains, New York. It is a wholly-owned subsidiary of MFN, a Delaware corporation headquartered in White Plains, New York. MFN is a holding company for its operating subsidiaries.

As noted above, prior to its bankruptcy filing, the majority of the members of the Board of Directors of MFN were elected by Metromedia, a U.S. holding company that maintains

investments in a number of businesses in diverse industries.⁶ Metromedia elected a majority of the members of the Board of Directors through its ownership of all the shares of MFN's Class B common stock. The VA Trust is a general partner of Metromedia. The VA Trust is a U.S. citizen whose primary business is investments and whose sole beneficiary is John W. Kluge, a U.S. citizen.

A chart showing the stockholders holding 10 percent or more of any class of MFN's stock prior to the proposed reorganization is attached as Annex B.

B. Description of MFNS' Business

The MFN Companies combine extensive metropolitan area fiber networks in the U.S. and abroad with a global optical IP network, data centers, and managed services to deliver fully-integrated, outsourced communications solutions as well as point solutions to carriers, large businesses, and governments. Specific services provided by the MFN Companies include:

- Dark fiber in major metropolitan areas throughout the U.S. and Europe;
- Long haul services within the U.S., and along transatlantic and transpacific routes, plus backhaul services on European and Japan routes;
- Network design and management;
- Managed web hosting services;
- Internet managed services, including move, audit, monitoring, security, backup, storage, and content delivery services; and
- Data center collocation, domain name and IP services, and IP transit.

The MFN Companies deliver these services over their own network of data centers, metropolitan fiber rings, and long haul fiber optic facilities, and through the use of facilities and services leased or purchased from other carriers. The MFN Companies have established and operate metropolitan area networks in certain markets in the U.S. in Germany and in the U.K. Many of these metropolitan area networks are connected by long haul networks consisting of

⁶ With the bankruptcy filing, however, MFN (as well as MFNS) has been operating as a
(continued...)

fiber leased from other providers. The MFN Companies use capacity acquired on TAT-14 and the Japan-U.S. cable networks to link operations in North America, Europe and Asia. In addition, the MFN Companies operate eight (8) enterprise-class data centers to provide collocation and Internet connectivity to customers. These data centers also serve as delivery platforms for the MFN Companies' managed web hosting and Internet managed services.

III. DESCRIPTION OF THE TRANSACTIONS PROPOSED

Since filing their petitions for bankruptcy protection, the MFN Companies have made substantial progress in preserving the value of and reorganizing their businesses. The MFN Companies have substantially reduced costs and expenditures, sold assets in certain non-strategic markets, and restructured and downsized the MFN Companies' organization. Implementing the Plan will complete the restructuring process. Through the Plan, the MFN Companies intend to recapitalize their businesses by converting certain secured claims and a substantial portion of allowed general unsecured claims into equity in Reorganized MFN in the form of new common stock, and by obtaining new funding through a \$50 million rights offering. Completing the MFN Companies' restructuring in this fashion will strengthen the MFN Companies and position them for long term success, achieve the MFN Companies' restructuring objectives as quickly and efficiently as possible, and implement a capital structure that will allow the MFN Companies to emerge from bankruptcy with a de-leveraged balance sheet.⁷

(...continued)

debtor-in-possession under the supervision of the Bankruptcy Court.

⁷ The Plan provides for and is predicated upon the substantive consolidation of the bankruptcy cases of each of the MFN Companies into a single bankruptcy case solely for bankruptcy purposes, including the implementation of the Plan. All assets and all liabilities of the MFN Companies will be treated as though the MFN Companies were merged, with Reorganized MFN as the surviving entity. For all other purposes, the MFN
(continued...)

Each component of the Plan that is relevant to this Application is discussed below.

A. Cancellation of Old Equity Interests

Upon implementation of the Plan, all then-current equity interests in MFN will be extinguished and deemed cancelled. The authorized capital stock of Reorganized MFN will consist of 30,000,000 shares of new equity ("New Common Stock"), which will have a par value of \$0.01 per share. The holders of New Common Stock will have one vote for each issued and outstanding share and will not have cumulative voting rights. There will be seven (7) members of the Board of Directors for Reorganized MFN, of which one (1) will be the Chief Executive Officer of Reorganized MFN, one (1) will be appointed by the Kluge Trust, and five (5) will be selected by the Creditors' Committee.

B. Issuance of New Common Stock

Upon implementation of the Plan, Reorganized MFN will issue New Common Stock to holders of certain pre-petition claims against MFN ("MFN Unsecured Claims") and certain pre-petition claims against MFN subsidiary companies ("Subsidiary Unsecured Claims"). Holders of allowed Subsidiary Unsecured Claims will receive a *pro rata* share of 2,688,437 of shares of New Common Stock issued under the Plan. Holders of allowed MFN Unsecured Claims will receive a *pro rata* share of 1,647,800 shares of New Common Stock issued under the Plan.⁸ Holders of disputed Subsidiary Unsecured Claims and disputed MFN Unsecured Claims will

(...continued)

Companies will continue to maintain their separate existence except as otherwise expressly provided in the Plan. The Plan also provides that, upon implementation of the Plan, some MFN Companies will be merged into other MFN Companies or dissolved. This *pro forma* change in corporate structure does not affect MFNS for the purposes of this Application.

⁸ A holder of an allowed MFN Unsecured Claim in excess of \$750 can elect to have its claim treated as a Class 7 Convenience Claim and receive \$750 in full and complete
(continued...)

receive their *pro rata* shares of the New Common Stock issued for their respective classes of claims if and to the extent such holders resolve their disputes.

Shares of New Common Stock will also be issued to the holders of certain pre-petition partially secured claims. Holders of claims known as “Class 2” or “Schedule 1 Other Secured Claims” who vote for the Plan will receive a holder-specific number of shares of New Common Stock. A maximum of 3,469,026 shares in the aggregate will be given to the eight (8) entities holding Schedule 1 Other Secured Claims; however, the number of aggregate shares will be reduced by the number of shares of New Common Stock attributable to any claim holder that rejects the Plan.⁹ In addition, the Kluge Trust will receive 944,737 shares of New Common Stock in exchange for the conversion of certain secured claims (“Kluge Trust Secured Claims”) and the reinvestment in cash of certain prior distributions, including prior interest payments.

C. Rights Offering

The New Common Stock issued to holders of MFN Unsecured Claims, Subsidiary Unsecured Claims, Schedule 1 Other Secured Claims, and Kluge Trust Secured Claims is subject to immediate dilution through a “Rights Offering.” Reorganized MFN will offer 1,669,242 shares of New Common Stock (the “Rights Shares”) to holders of MFN Unsecured Claims and Subsidiary Unsecured Claims for an aggregate of \$50 million in additional cash.

The Rights Offering is expected to commence at or shortly after closing of the Plan, subject to the receipt of any required approvals. Holders of MFN Unsecured Claims and Subsidiary Unsecured Claims will have the opportunity to exercise rights to subscribe to a *pro*

(...continued)

satisfaction of the claim.

⁹ Holders of Schedule 1 Other Secured Claims that reject the Plan will receive compensation in another form as well as the right to recovery as a holder of a Subsidiary
(continued...)

rata share of the Rights Shares for approximately 30 days after the commencement of the Rights Offering. These rights are not transferable. Thereafter, if any outstanding rights have not been exercised, the Kluge Trust is required by the Plan to purchase all such outstanding rights at an exercise price of \$29.95 per share, for an amount not to exceed 834,621 Rights Shares for \$25 million.

D. New Warrants and Incentive Stock Option Plan

Two series of warrants -- "Five Year Warrants" and "Seven Year Warrants" -- will be issued under the Plan to holders of MFN Unsecured Claims. These warrants will enable holders to purchase specified amounts of New Common Stock at prices representing a premium to the assumed pre-Rights Offering equity value of Reorganized MFN.¹⁰ Five Year Warrants will expire five (5) years after they are issued, while Seven Year Warrants will expire seven (7) years after they are issued.

Finally, the Plan includes provision for the adoption of an incentive stock option and restricted stock grant plan. This plan would enable Reorganized MFN to grant options to purchase shares of New Common Stock and give restricted stock, to the management and employees of Reorganized MFN and its subsidiaries as determined from time to time by the Board of Directors of Reorganized MFN.

E. Ownership of MFNS Following Implementation of Proposed Reorganization

Following implementation of the Plan, Reorganized MFNS will be a wholly-owned

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Unsecured Claim in certain circumstances.

¹⁰ Specifically, the Five Year Warrants will enable holders of MFN Unsecured Claims to purchase a *pro rata* share of 656,250 shares of New Common Stock with an exercise price of \$20 per share. The Seven Year Warrants will enable holders of MFN Unsecured Claims to purchase a *pro rata* share of 656,250 shares of New Common Stock with an
(continued...)

subsidiary of Reorganized MFN. A chart showing the corporate organization of Reorganized MFN and its subsidiaries, including Reorganized MFNS, is provided in Annex C.

As noted above, shares of New Common Stock will be issued to holders of the Kluge Trust Secured Claims, Schedule 1 Other Secured Claims, Subsidiary Unsecured Claims, and MFN Unsecured Claims. While the Kluge Trust holds all the Kluge Trust Secured Claims, the holders of Schedule 1 Other Secured Claims, Subsidiary Unsecured Claims, and MFN Unsecured Claims are largely equipment and service vendors and financial institutions. Numerous entities hold Schedule 1 Other Secured Claims, Subsidiary Unsecured Claims, and/or MFN Unsecured Claims.

Based on MFN's review of the entities holding the Kluge Trust Secured Claims, Schedule 1 Other Secured Claims, Subsidiary Unsecured Claims, and MFN Unsecured Claims as well as the likely amount of these entities' claims, MFNS believes that only two (2) shareholders will hold a 10 percent or greater ownership interest in MFN (and thus in MFNS) following the initial issuance of New Common Stock.¹¹ As noted previously, these entities are the Kluge

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exercise price of \$24 per share.

¹¹ After the initial issuance of New Common Stock, 10 other mutual funds operating under the aegis of Franklin will separately hold ownership interests in Reorganized MFN. The ownership interest of each fund will range from 6.16 percent to less than .01 percent. Each of these funds, including Mutual, is considered to be a separate legal entity for tax and accounting purposes. While some of the funds share the same board of directors, the majority of the directors on all but one of these boards are disinterested directors (and the board whose majority of directors are not disinterested will hold less than a .23 percent ownership interest in Reorganized MFN). No shareholder of any of these funds would be deemed to hold a 10 percent or greater interest under the relevant ownership attribution rules.

Franklin provides to these funds many of the services required to operate a fund. However, neither Franklin nor any of its subsidiary companies hold equity interests in any of the funds. Franklin Mutual Advisers, LLC ("FMA") is the investment advisor to each of these funds pursuant to a separate advisory contract with each fund. Pursuant to (continued...)

Trust, which will hold approximately 11 percent of the equity in Reorganized MFN before the Rights Offering, and Mutual, which will also hold approximately 11 percent of the equity in Reorganized MFN before the Rights Offering. The Kluge Trust and its sole beneficiary, John W. Kluge, are U.S. citizens, as is Mutual. None of Mutual's shareholders will hold a 10 percent or greater ownership interest in Reorganized MFN under the Commission's applicable ownership attribution rules.

It is, of course, impossible to determine now the results of the exercise of the rights or warrants. The Rights Offering could dilute the holdings of Schedule 1 Other Secured Claims; either dilute or increase the holdings of any of the holders of MFN Unsecured Claims and Subsidiary Unsecured Claims; and either dilute or increase the holdings of the Kluge Trust, depending on the extent to which (if at all) the Kluge Trust purchases unexercised rights.¹² However, based upon MFN's review of the likely *pro rata* share of the rights to which each entity entitled to participate in the Rights Offering could subscribe, MFNS does not anticipate that any entities other than the Kluge Trust and Mutual will hold 10 percent or more of Reorganized MFN's stock at the time the Rights Offering expires.¹³ Rather, MFNS expects that

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these contracts, FMA makes investment decisions and holds the voting rights for the securities beneficially owned by each fund. However, each advisory contract limits FMA's discretion to operating in accordance with the overall directives and goals of that specific fund, and requires FMA to follow the directions of the fund's board. Furthermore, FMA has no economic interest in any of the investments it manages on behalf of the funds.

¹² Similarly, exercise of the Five Year Warrants and/or Seven Year Warrants could also dilute the holdings of the Kluge Trust, holders of Schedule 1 Other Secured Claims, or holders of Subsidiary Unsecured Claims, and either dilute or increase the holdings of holders of MFN Unsecured Claims. However, there can be no certainty that these warrants will in fact ever be exercised.

¹³ MFNS notes that the inability of a company emerging from bankruptcy to specify with certainty the entities or individuals that will hold 10 percent or more of the company's
(continued...)

the next largest shareholder of Reorganized MFN following the Rights Offering will hold only an 8 percent ownership interest. Furthermore, it is MFNS' current understanding that no entity will control Reorganized MFN at the conclusion of the Rights Offering or following the Kluge Trust's purchase (if any) of any unexercised rights. Even if no rights were exercised and the Kluge Trust purchased 834,621 Rights Shares per the Plan, the Kluge Trust's ownership interest in Reorganized MFN would be only 19 percent.¹⁴ Since all holders of New Common Stock have only one vote per share and do not have cumulative voting rights, and the only shareholder protection given to the Kluge Trust is the right to elect one out of 7 directors, the additional shares that the Kluge Trust could conceivably obtain as a result of the Rights Offering would not be enough to give it control of Reorganized MFN.

IV. IMPLEMENTATION OF PLAN OF REORGANIZATION WILL SERVE THE PUBLIC INTEREST.

In considering the proposed transaction under Section 214 of the Act, the Commission must determine whether consent to the requested assignment serves the public interest. In making this determination, the Commission weighs the potential public interest harms of the

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stock following implementation of a plan of reorganization has not previously been a bar to the Commission's grant of the company's application for consent to assignment of license or transfer of control. *See, e.g., XO Communications, Inc., Applications for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Memorandum Opinion, Order and Authorization, 17 FCC Rcd 19212 (2002) ("XO Order"); Application of Metrocall, Inc., File No. ITC-ASG-20020725-00408, Report No. TEL-00579, DA No. 02-2394, granted Sept. 24, 2002; Application of Metrocall USA, Inc., Debtor-in-Possession, File No. ITC-ASG-20020725-00409, Report No. TEL-00579, DA No. 02-2394, granted Sept. 24, 2002.

¹⁴ This assumes that the Kluge Trust holds 1,779,358 shares of New Common Stock (944,737 initial shares plus 834,621 Rights Shares) out of a total of 9,584,621 shares (continued...)

proposed transaction against the potential public interest benefits to ensure that, on balance, the proposed transfer of control serves the public interest, convenience and necessity. The Commission's analysis considers the likely competitive effects of the proposed transfer and whether such transfer raises significant anti-competitive issues. In addition, the Commission considers the efficiencies and other public interest benefits that are likely to result from the transfer. Further, the Commission considers whether the proposal presents national security, law enforcement, foreign policy, or trade policy concerns.¹⁵

As shown below, the reorganization of MFN in accordance with the terms of the Plan will yield substantial public interest benefits and will not pose any potential for harming the public. Furthermore, the proposed transaction does not raise any national security, law enforcement, foreign policy, or trade policy concerns. Accordingly, grant of this Application will serve the public interest.

A. The Reorganization Of MFN In Accordance With The Plan Will Produce Substantial Procompetitive Benefits For The Public, As It Will Enable MFNS To Continue To Compete In The U.S. Telecommunications Market.

Implementation of the Plan will yield affirmative, tangible and substantial public interest benefits. Most importantly, the proposed reorganization is necessary for MFNS and the other MFN Companies to survive in the U.S. telecommunications market. The MFN Companies and other emerging telecommunications entities have suffered amid the downturn in the technology

(...continued)

(8,750,000 initial shares plus 834,621 Rights Shares).

¹⁵ See, e.g., XO Order, *supra* note 13, at ¶¶ 11-12; *Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor, and Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and (continued...)

and communications markets, slowing demand, and a marked tightening of capital markets as investors shied away from funding enterprises that were not generating net profits or had unfunded business plans. The proposed reorganization pursuant to the Plan will allow MFN to build upon its solid foundation with a strengthened balance sheet and significantly reduced debt.

Thus, implementation of the Plan will serve the public interest, because it will strengthen MFNS and enable it to meet its contractual and service obligations over the longer term. Unless the Plan is implemented, MFNS may be forced to decrease services and investment, and perhaps cease operations altogether. By contrast, the proposed transaction will enable the MFN Companies to continue investing in their network and providing high quality communications solutions to their customer base. The Commission has previously recognized that a transfer of control that increases the financial ability of a licensee with respect to its operations serves the public interest.¹⁶

Implementation of the Plan will also yield meaningful public interest benefits because it will foster greater competition in the provision of telecommunications services. The Commission has held that the public interest is served if a proposed transaction would increase competition among market participants.¹⁷ Implementation of the Plan will allow MFNS to continue as a strong competitor, by providing MFNS with the necessary funding to support its

(...continued)

Authorization, FCC 01-369, rel. Dec. 18, 2001, at ¶ 13.

¹⁶ See *In-flight Phone Corp. for Transfer of Control to MCI Telecommunications Corp., Declaratory Ruling and Order*, 10 FCC Rcd 10448 (1995); *Application of the Transfer of Control of American Satellite Co.*, Memorandum Opinion and Order, File No. ENF-85-50, rel. Oct. 16, 1985.

¹⁷ See *In-flight Phone Corp. for Transfer of Control to MCI Telecommunications Corp., Declaratory Ruling and Order*, 10 FCC Rcd 10448 (1995); *Execuline of Sacramento, Inc., Transferor, and American Sharecom, Inc., Transferee*, Memorandum Opinion and Order, 6 FCC Rcd 5964 (1991).

proposed business plan and to expand its operations and services.

The Commission has previously recognized that the competitive impact of a transaction that allows a licensee to emerge from bankruptcy and continue operations is likely to be beneficial.¹⁸ In light of these facts, it is clear that the reorganization of the MFN Companies pursuant to the Plan will enhance competition in the relevant markets to the ultimate benefit of the public.

B. The Reorganization Of MFN In Accordance With The Plan Will Not Result In Any Anticompetitive Effects Or Other Harms To The Public Interest.

The Commission's public interest analysis under Section 214(a) includes an evaluation of the competitive effects of the proposed transaction in the relevant product and geographic markets. For telecommunications service providers, the Commission has determined that the relevant product and geographic markets can include both U.S. domestic telecommunications service markets and telecommunications services between the U.S. and foreign points. With respect to domestic telecommunications services, the Commission separately analyzes the impact on competition in the product market for local exchange and exchange access services, and the product market for exchange services. The Commission further distinguishes between services provided to (1) residential customers and small business (mass market), and (2) medium-sized and large business customers (large business market). The Commission has similarly distinguished between international services provided to mass market and larger business market customers.¹⁹ As noted previously, the MFN Companies provide fiber optic infrastructure, high-

¹⁸ See *Orbital Communications Corp and ORBCOMM Global, L.P., et al*, Order and Authorization, DA 02-576, rel. Mar. 11, 2002; *Space Station System Licensee, Inc. and Iridium Constellation LLC, et al.*, Memorandum Opinion, Order and Authorization, DA 02-307, rel. Feb. 8, 2002.

¹⁹ XO Order, *supra* note 13, at ¶ 28 and n.84.

bandwidth Internet connectivity, managed Internet infrastructure, and collocation services to carriers, governments, and large businesses throughout the U.S. Competition in the provision of these services to these types of customers is intense.²⁰

The reorganization of the MFN Companies pursuant to the Plan would not likely result in harm to competition in any relevant market. The proposed transaction is not a merger; rather, it is simply a reorganization in bankruptcy. No actual or potential competitors will be eliminated or otherwise unduly impacted by the proposed transaction. John W. Kluge, the sole beneficiary of the Kluge Trust, is also the sole beneficiary of the VA Trust, which is a general partner of Metromedia. However, as shown previously, the Kluge Trust will not control Reorganized MFN. Furthermore and on information and belief, neither Metromedia nor its subsidiaries provides services similar to those that will be provided by the Reorganized MFNS or the other MFN Companies. As a result, the reorganization of MFN in accordance with the Plan will not pose a threat of a reduction in the number of potential competitors in the geographic and product markets served by MFNS, nor will it result in any anti-competitive effects. Rather, the approval of the proposed restructuring will insure that MFNS remains in the U.S. telecommunications market as a viable competitor.

C. The Reorganization Of MFN In Accordance With the Plan Does Not Raise Any National Security, Law Enforcement, Foreign Policy, Or Trade Policy Concerns.

Finally, the proposed reorganization of the MFN Companies should raise no concerns with the Executive Branch regarding national security, law enforcement, foreign policy, or trade

²⁰ Hoover's cites Verio, Globix, AT&T, EDS, IBM, Level 3 Communications, Qwest, Verizon, and XO Communications, among others, as competitors to MFN. *Metromedia Fiber Network, Inc.: The Basics*, Hoover's Report for Metromedia Fiber Network, Inc., 2003, available at <http://www.hoovers.com>.

policy. As noted previously, John W. Kluge, the Kluge Trust and Mutual are U.S. citizens and will not have a controlling interest in Reorganized MFN. Should the Executive Branch raise any concerns, MFNS will work diligently and cooperatively to address them.

V. SECTION 63.04(a) INFORMATION

Pursuant to Sections 63.04(a) of the Commission's Rules, MFNS sets forth the following information in support of this Application:

- (1) Relevant names, addresses, and telephone numbers:

Metromedia Fiber Network Services, Inc., Debtor-in-Possession ("MFNS")
360 Hamilton Avenue
White Plains, New York 10601
Telephone: (914) 421-6700
Fax: (914) 421-6777

The name, address, and telephone number of the Assignee is:

Metromedia Fiber Network Services, Inc. ("Reorganized MFNS")
360 Hamilton Avenue
White Plains, New York 10601
Telephone: (914) 421-6700
Fax: (914) 421-6777

- (2) MFNS is a company organized under the laws of the State of Delaware. Reorganized MFNS will be a company organized under the laws of the State of Delaware.
- (3) Correspondence concerning this Application should be sent to:

Robert Sokota, Esq.
Jill Sandford, Esq.
Metromedia Fiber Network, Inc.
360 Hamilton Avenue
White Plains, New York 10601
Telephone: (914) 421-6700
Fax: (914) 421-6777
Robert.Sokota@mfn.com
Jill.Sandford@mfn.com

with copies to:

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8000 Towers Crescent Drive, Suite 1200
Vienna, VA 22182
Telephone: (703) 918-2300
Fax: (703) 918-2450
grifj@kelleydrye.com

- (4) Following emergence from bankruptcy as proposed by the Plan of Reorganization, Metromedia Fiber Network, Inc. as reorganized ("Reorganized MFN") will hold 100 percent of the equity in Reorganized MFNS. Reorganized MFN will be a Delaware corporation whose primary business is telecommunications; its address will be 360 Hamilton Avenue, White Plains, NY 10601. It is anticipated that the following entities will hold 10 percent or more of the ownership interest in Reorganized MFN:

Kluge Trust. It is anticipated that the Kluge Trust will hold approximately 11 percent of the equity in Reorganized MFN and thus approximately 11 percent of the equity in Reorganized MFNS. The "Kluge Trust" means John W. Kluge, Chase Manhattan Bank and Stuart Subotnick, trustees under a trust agreement dated May 30, 1984, as amended and restated, between John W. Kluge as grantor and John W. Kluge and Manufacturers Hanover Trust Company as trustees. The Kluge Trust is a U.S. citizen whose principal business is investments; its address is c/o Metromedia, One Meadowlands Plaza, 6th Floor, East Rutherford, New Jersey 07073. John W. Kluge is the sole beneficiary of the Kluge Trust. Mr. Kluge is a U.S. citizen whose address is c/o Metromedia, One Meadowlands Plaza, 6th Floor, East Rutherford, New Jersey 07073 and whose principal business is investments.

Mutual. It is anticipated that Mutual Shares Fund ("Mutual") will hold approximately 11 percent of the equity in Reorganized MFN and thus approximately 11 percent of the equity in Reorganized MFNS. Mutual is a mutual fund operating under the aegis of Franklin Templeton Investments ("Franklin"). Mutual is a U.S. citizen whose principal business is investments; its address is c/o Franklin Mutual Advisers, LLC, 51 John F. Kennedy Parkway, Short Hills, NJ 07078. None of Mutual's shareholders will hold a 10 percent or greater ownership interest in Reorganized MFN under the Commission's applicable ownership attribution rules.

The Rights Offering discussed in Section III above, including the requirement that the Kluge Trust purchase unexercised rights in an amount up to \$25 million, may affect the equity percentages held by all holders of Reorganized MFN New Common Stock.

However, MFNS does not anticipate that any person or entity will have *de facto* or *de jure* control of Reorganized MFN, or that any person or entity other than those listed above will hold a 10 percent or greater ownership interest in Reorganized MFN and thus in Reorganized MFNS.

- (5) As evidenced by the signature to this Application, MFNS certifies on behalf of Reorganized MFNS that no party to this Application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
- (6) Assuming the Plan is confirmed by the Bankruptcy Court, the outstanding shares of common stock of MFN would be cancelled. Certain secured lender claims and a substantial portion of allowed general unsecured claims would be converted into equity in the newly reorganized MFN ("Reorganized MFN") in the form of new common stock. Reorganized MFN would seek to obtain additional funding through a \$50 million rights offering available to certain shareholders. The Plan also provides for the grant of stock options to Reorganized MFN management and two series of warrants to certain creditors for the purchase of additional common stock. More details regarding the transaction are provided in Section III above.
- (7) As discussed in Section II above, MFNS and the MFN Companies provide fiber optic infrastructure, high-bandwidth Internet connectivity, managed Internet infrastructure, and collocation services to carriers, governments, and large businesses throughout the U.S. Among other things, the MFN Companies operate metropolitan area networks in Atlanta, Baltimore, Boston, Chicago, Dallas, Denver, Houston, Kansas City, Los Angeles, Miami, New Jersey (Central and Northern regions), New York (including Long Island and White Plains), Philadelphia, Phoenix, San Francisco, Seattle, and Washington, D.C. The MFN Companies tie together operations among many of their metropolitan area networks with long haul networks. The MFN Companies own most of a long haul network between New York City and Washington, D.C. Reorganized MFNS will provide the same services in the same geographic regions as MFNS.
- (8) The streamlined processing procedures set forth in Section 63.03 of the Commission's Rules shall be presumed to apply to this Application because this Application satisfies the criteria set forth in Section 63.03(b)(2). The transaction proposed herein will result in Reorganized MFNS having a market share in the interstate, interexchange market of less than 10 percent; any competitive telephone exchange services or exchange access services provided by Reorganized MFNS will be provided exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and neither MFNS nor Reorganized MFNS are dominant with respect to any service.
- (9) Concurrent with the submission of this Application, MFNS is filing an application for consent to the transfer of control of MFNS with respect to MFNS's international Section 214 authorization. Metromedia Fiber Network International, Inc., Debtor-in-Possession ("MFNI"), is also filing at this time an international Section 214 application for consent to the transfer of control of MFNI pursuant to the Plan. MFNI

is a subsidiary of MFNS.


- (10) MFNS is not requesting special consideration because the MFN Companies are facing imminent business failure.
- (11) No separately filed waiver requests are being sought in connection with the proposed transaction.
- (12) The public interest is served if MFN is restructured in accordance with the Plan. The reorganization of MFN according to the Plan will place Reorganized MFNS on firm financial footing and will thereby preserve and strengthen competition in the telecommunications industry, to the ultimate benefit of the public. MFNS will continue to provide high-quality communications services to its customers without interruption. At the same time, the procompetitive benefits of the Plan will not be diminished by any anticompetitive effects. The proposed transaction is a reorganization in bankruptcy, not a merger. No competitors will be eliminated as a result of the transaction. More information regarding the public interest benefits of the Plan, including information regarding the effects of the proposed transaction on competition in domestic markets, is provided in Section IV above.

VI. CONCLUSION

For the foregoing reasons, MFNS respectfully requests that the Commission grant this Application for consent to the transfer of control of MFNS as expeditiously as possible.

Respectfully submitted,

METROMEDIA FIBER NETWORK SERVICES, INC.

By: 
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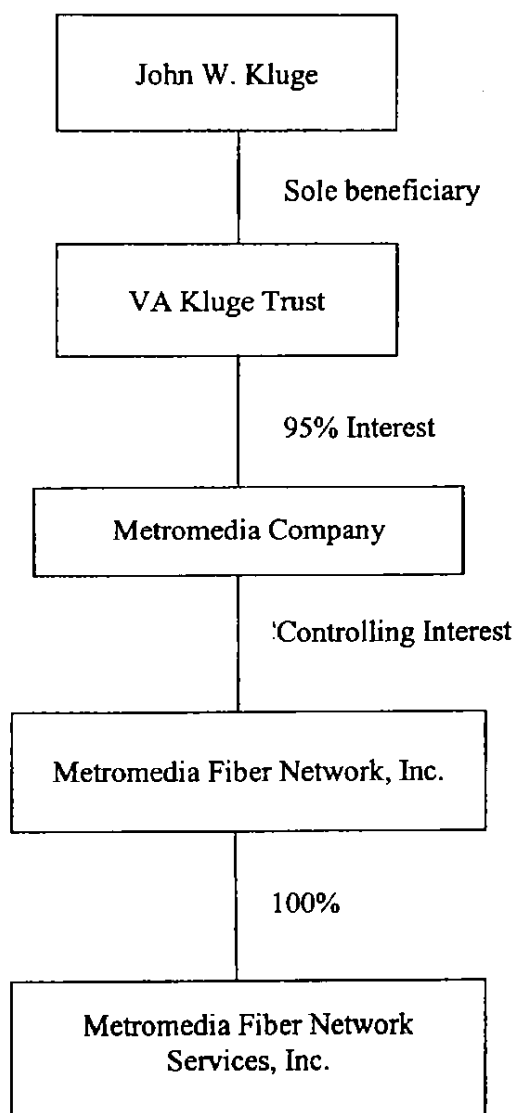
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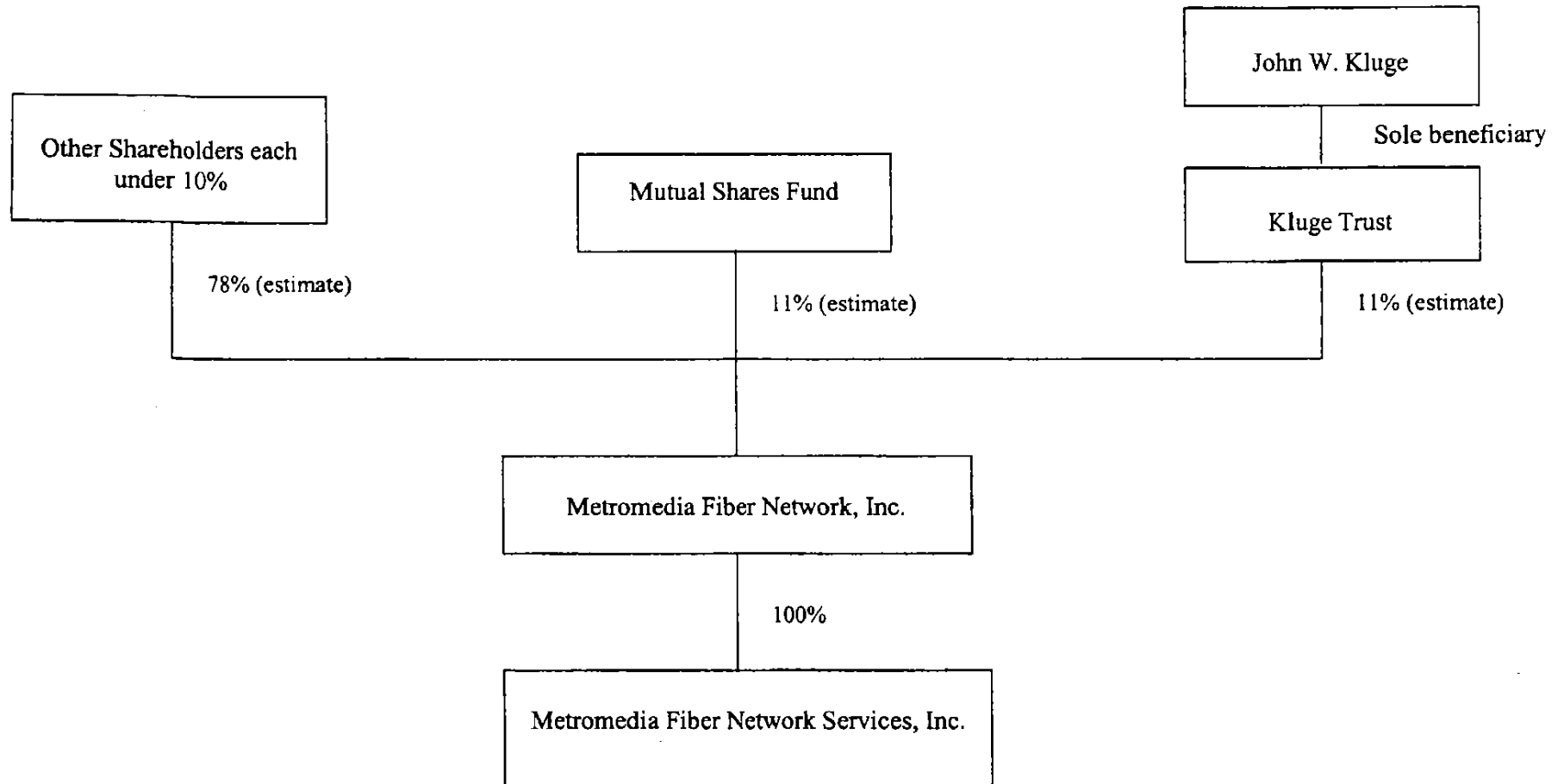
Date: May 27, 2003

Current 10% or Greater Shareholders
and Organization of
Metromedia Fiber Network Services, Inc. Prior to Bankruptcy Filing*



*Since the bankruptcy filing, MFNS has been operating as a debtor-in-possession under the supervision of the Bankruptcy Court, the United States Trustee, and the Creditors' Committee.

Proposed 10% or Greater Shareholders
and Organization of
Metromedia Fiber Network Services, Inc. Post-Reorganization*



*No shareholders other than the Kluge Trust and Mutual Shares Fund are expected to hold 10% or more of the common stock of Reorganized MFN (either directly or pursuant to the applicable ownership attribution rules) following the initial issuance of New Common Stock or after the Rights Offering.